

REMARKS

The present amendment is submitted in conjunction with a Request for Continued Examination (RCE) and in response to the final Office Action dated September 30, 2008, which set a three-month period for response, making this amendment due by December 30, 2008.

Claims 1-2 and 4-22 are pending in this application.

In the final Office Action, the abstract of the disclosure was objected to for an informality. Claims 1-2, 4-5, 7-10, 12-13 and 16 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 7,076,838 to Meixner ("Meixner '838"). Claims 6, 11 and 19 were rejected under 35 U.S.C. 103(a) as being unpatentable over Meixner in view of GB 2171045A to Weber. Claims 14-15, 17-18, 20-22 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 7,100,706 to Meixner et al ("Meixner '706") in view of U.S. Patent No. 707,803 to Smith.

In the present amendment, the abstract of the disclosure was amended to address the objection.

To more clearly define the present invention over the cited references, the claims were amended to claim a "rotary hammer". In addition, claim 1 now includes features of claims 8, 12, and 17 as well as features of the invention disclosed in paragraphs [0018] and [0019] of the specification. Claims 8, 12, and 17 have been canceled.

The Applicant respectfully submits that the cited references neither anticipate nor render obvious the subject matter of the claims.

Meixner '838 discloses a handle device (3) for a hand-held power tool with a vibration-shielding unit. The vibration-shielding unit includes a pair of force-transmission elements (19, 31; 41, 45; 43, 47) which are connected to each other at one of their ends.

Meixner'838 discloses connecting two-force-transmission elements (19, 31; 41, 45; 43, 47) at one end to each other. Meixner '838 therefore lacks the feature of amended claim 1 that the force-transmission elements are configured to perform a scissors-type motion. Because of the arrangement of the force-transmission elements in the present invention, tilting and resulting turning of the handle device can be easily prevented without any additional elements.

In contrast, the handle device disclosed by Meixner '838 also has pockets (11, 13) into which legs (5, 7) of the handle device extend. The legs (5, 7) bear against a machine housing (1) via spring elements (15, 17) in these pockets (11, 13) (see Meixner '838, column 2, lines 44-48; Figs. 1-3). These pockets (11, 13) in Meixner '838 are provided for preventing a tilting and a resulting turning of the handle device.

In contrast, with the present invention, components for stabilizing the handle can be eliminated and the rotary hammer can be constructed easily and cost-effectively.

The practitioner skilled in the art is provided with no suggestion from Meixner '838 that would motivate him to arrange the force-transmission elements crossing over each other such that they perform a scissors-type motion.

Meixner '706 discloses a hand-held power tool with a machine housing (1) and a handle (2), wherein the machine housing (1) and the handle (2) are coupled movably to each other by two **parallel** force-transmission elements (4 and 5, 20 and 21, 25 and

26). Meixner '706 also fails to disclose that the force-transmission elements are intended to perform a scissors-type motion, so that one skilled in the art again is provided with no suggestion that would lead him to the present invention as defined in amended claim 1.

The cited patent to Weber discloses a hand-held power tool handle device with two levers (15) connected together at their ends to couple a housing (11) and a handle (12) of the power tool. In addition, compression springs (14) are mounted in reception bores (12a) of the handle (12).

Weber also fails to disclose that the force-transmission elements are configured to perform a scissors-type motion.

As noted above with regard to Meixner '838, additional elements for stabilizing the handle, such as the stabilizing surfaces 11a in Weber, can be eliminated with the arrangement of the force-transmission elements as recited in amended claim 1, resulting in a simple and inexpensive construction of a rotary hammer.

Therefore, one skilled in the relevant art would not be lead to the present invention from the teachings of Weber.

The cited patent to Smith discloses a clamp with a guide device for guiding a clamping motion of the clamp and which is composed of two levers (5, 6) crossing over each other (Smith, Figs. 1 and 2). Although Smith teaches a guide device with two crossing levers, the practitioner could not be led to the subject matter of claim 1, because Smith and the subject matter of claim 1 relate to different technical fields. The guide device taught in Smith is provided for guiding a clamping motion so that the two halves of the clamp move together equally. In contrast, claim 1 as amended relates to a

rotary hammer with a main body with an impact mechanism which generates axial impact impulses on a tool and with a handle that is connected to the main body via a vibration-shielding unit.

The Examiner argues on page 5 of the final rejection that Smith teaches the concept of two housing parts movable together by two force-transmission elements. The Applicants respectfully disagree with this analysis, since the Smith device concerns a clamping device and is in no way related to the ***relative displacement of two housing parts***. Precisely for this reason, the practitioner skilled in the art would not consider the disclosure of Smith as a relevant reference in the field of the construction of rotary hammers, especially in view of the fact that the forces acting by the vibration shielding of a rotary hammer differ dramatically from the typical forces that occur in the manipulation of a clamping device

The device taught in Smith is an ***adjusting device*** for adjusting the distance between two clamp elements (14, 15) and is not adapted to absorb vibrations, that is, to react rapidly to the violent force acting on one of the clamp elements (14, 15). This is clear to one skilled in the art, since Smith lacks the feature of a return element which is the central elements of a vibration-shielding unit. For a precise adjustment of the distance between the two clamp elements in Smith, the connection between the clamps via the levers (5, 6) must be a rigid connection. Based on this fact, it is clear that the teachings of Smith are not adapted to the field of a vibration-shielding unit which requires a non-rigid connection between two movable parts such that a transmission of vibrations of one part to the other part can be avoided.

The Applicants therefore respectfully submit that it would not be obvious to one skilled in the art of rotary hammers, seeking to improve the vibration-shielding unit taught in Meixner '838, to consider the Smith reference as a relevant reference, since Smith is in no way related to the construction of a vibration-shielding unit.

Because claim 1 as amended includes features that are not disclosed by any of the references, the rejection under Section 102 cannot stand. MPEP section 2131, last paragraph, states that "a claim is anticipated only if each and every element as set forth in the claims is found, either expressly or inherently described, in a single prior art reference", and that "the identical invention must be shown in as complete detail as is contained in the ... claim". A prior art reference anticipates a claim only if the reference discloses every limitation of the claim. Absence from the reference of any claimed element negates anticipation. **Row v. Dror**, 42 USPQ 2d 1550, 1553 (Fed. Cir. 1997).

Likewise, amended claim 1 is not rendered obvious by the cited references, whether viewed alone or in combination. It is respectfully submitted that since the prior art does not suggest the desirability of the claimed invention, such art cannot establish a prima facie case of obviousness as clearly set forth in MPEP section 2143.01. Please note also that the modification proposed by the Examiner would change the principle of operation of the prior art, so that also for this reason the references are not sufficient to render the claims prima facie obvious (see the last paragraph of the aforementioned MPEP section 2143.01).

The application in its amended state is believed to be in condition for allowance. Action to this end is courteously solicited. However, should the Examiner have any further comments or suggestions, the undersigned would very much welcome a

telephone call in order to discuss appropriate claim language that will place the application into condition for allowance.

Respectfully submitted,

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